

AO 91 (Rev. 11/11) Criminal Complaint (modified by USAO for telephone or other reliable electronic means)

UNITED STATES DISTRICT COURT

for the

Southern District of Ohio

United States of America

v.

Damion BERRY

Case No. 2:23-mj-10

Defendant(s)

CRIMINAL COMPLAINT BY TELEPHONE OR OTHER RELIABLE ELECTRONIC MEANS

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of December 30, 2022 in the county of Franklin in the
Southern District of Ohio, the defendant(s) violated:

Code Section

18 USC 922(g)(1)

Title 21 U.S.C. 841

Offense Description

Knowingly Possess a Firearm by a Convicted Felon

Manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense a controlled substance

This criminal complaint is based on these facts:

SEE ATTACHED

☒ Continued on the attached sheet.

Cole Benner

Complainant's signature

Cole Benner, ATF Special Agent

Printed name and title

Sworn to before me and signed in my presence.

Date: January 9, 2023

City and state: Columbus Ohio

Kimberly A. Johnson
Kimberly A. Johnson

United States Magistrate Judge



AFFIDAVIT

I, Cole D. Benner, deposes and state:

1. I am a Special Agent with the Bureau of Alcohol, Tobacco, Firearm and Explosives (“ATF”), and have been since March of 2020. I am currently assigned to the Columbus, Ohio Field Office as a member of the Crime Gun Enforcement Team (CGET) Task Force. As part of my duties as an ATF Special Agent, I investigate criminal violations relating to federal firearms offenses, including the unlawful possession of firearms and ammunition by individuals who have been convicted in any court, of a crime punishable by imprisonment for a term exceeding one year. I have participated in numerous investigations of criminal violations relating to illegal firearms possession, firearms trafficking and shooting investigations. I am familiar with, and have utilized multiple investigative methods, including electronic surveillance, visual surveillance, search warrants, and the utilization of GPS/E-911 data.

2. Pursuant to 18 U.S.C. § 3051, I am empowered to enforce criminal laws of the United States. As result of my training and experience, I am familiar with federal laws including 18 U.S.C. § 922(g)(1), which states: It shall be unlawful for any person who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

3. I know that individuals who possess firearms and ammunition as felons or otherwise, often store those firearms and ammunition in their homes or cars, so that the firearms and ammunition are easily accessible. I also know that firearms are durable and non-perishable

goods, which can be expected to remain in the individual's possession for extended periods of time.

4. The facts in this affidavit come from my personal observations, training and experience, as well as information obtained from other agents, officers, and witnesses. This affidavit is intended to show merely that there is sufficient probable cause for the requested warrant and does not set forth all of my knowledge about this matter.

5. Based on my training and experience and the facts as set forth in this affidavit, there is probable cause to believe that Damion BERRY has violated Title 18 U.S.C. § 922(g)(1), Possession of Firearm and Ammunition by Convicted Felon and Title 21, United States Code, Section 841(a)(1) manufacture, distribute, or dispense, or possess with intent to manufacture, distribute or dispense a controlled substance.

PROBABLE CAUSE

December 30, 2022 – 5100 block of Cedar Dr. Columbus, OH.

6. On December 30, 2022, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Task Force Officer (TFO) Jeff Kasza and I assisted the Columbus Police Department (CPD) Special Weapons and Tactics (SWAT) team effect the arrest of Damion BERRY, who was found to be in possession of a firearm and contraband.

7. On December 30, 2022, I learned that BERRY had a warrant issued for his arrest relating to Franklin County Case (21CR004293) for a bond violation for failure to appear. In Franklin County Case (21CR004293) BERRY was charged with Attempted Murder, Felonious Assault, Intimidation of a crime victim/witness, and Weapon under disability. TFO Kasza and I began conducting surveillance in an attempt to locate BERRY.

8. I was in the parking lot of the United Dairy Farmers (UDF) located at 2660 Noe Bixby Rd. Columbus, OH 43232 when I observed a Maroon 2016 Toyota Rav4 bearing OHL JPWR1248. I observed BERRY sitting in the front passenger seat. A subject later identified as Mohamed Ly (B/M DOB: 11/29/19XX) was driving the vehicle.

9. I notified CPD SWAT Officers of this information on BERRY. CPD Officers arrived on scene and began to surveil the vehicle and BERRY. The vehicle exited the parking of the UDF and began to travel North on Noe Bixby Rd. The vehicle then made an Eastbound turn onto Cedar Dr.

10. The vehicle was in the area of the 5100 block of Cedar Dr. when CPD Officers approached. BERRY was observed with a black, satchel type, bag strapped across his chest. BERRY exited the passenger seat of the vehicle when CPD Officers made contact with him. Ly exited the driver's seat and Mirah Thompson (B/F DOB: 12/12/19XX) got into the driver's seat of the vehicle. Thompson was not in the vehicle prior to her first being observed by law enforcement.

11. BERRY had the black bag across his chest and a McDonalds bag in his left hand. BERRY was ordered to get on the ground at which time he attempted to take the black bag off. Officers grabbed the bag and placed BERRY into custody. Ly and Thompson were detained. Officers looked in the passenger side of the vehicle to ensure that nobody else was in the vehicle at which time they observed a handgun (American Tactical, Model FXS-9, 9mm pistol SN: TF674-21A05488) sitting on the passenger seat.



12. No contraband or weapons were located on Ly or Thompson.

13. I spoke with Ly and notified him that he was not under arrest. Ly was not in handcuffs and requested to go inside his residence to retrieve his Identification card. I received consent and accompanied Ly inside his residence. Ly showed me his identification card. I asked Ly if he had a firearm during this incident. Ly stated he did not have a firearm.

14. I then went back outside to the parking lot, and I spoke with Thompson. I notified her that she was not under arrest. I asked Thompson if she had left a firearm in the vehicle (Toyota Rav4). Thompson stated she did not leave a firearm in the vehicle.

15. The black bag that was on BERRY's person was searched incident to arrest. Located in the bag was approximately 50.571 grams of methamphetamine, approximately 34.112 grams of crack cocaine (cocaine base), approximately 26.215 grams of cocaine, U.S. currency, and a digital scale. Additionally, BERRY was found to have U.S. currency as well as two (2) suspected Xanax pills on his person. BERRY was in possession of a total of \$1,509.00 in U.S. Currency.

16. I conducted a Computerized Criminal History (CCH) query on BERRY and revealed the following felony conviction. BERRY was convicted on or about June 5, 2019, in United State District Court, Southern District of Ohio, in case 2:19CR77 of 18 U.S.C. 922(g)(1) Felon in Possession of Firearm. BERRY was sentenced to approximately 30 months in prison followed by approximately 36 months of supervised release. BERRY was on supervised release at the time of his December 30, 2022, arrest.

17. Additionally, BERRY has been convicted of the following felonies in Franklin County Court. F4 Possession of Drugs & F3 Weapons Under Disability (11CR003622), F3 Weapons Under Disability (11CR006554), F2 Burglary (13CR006375), F4 Possession of Drugs (15CR001485), F4 Attempted Escape (17CR000720), and F4 Possession of Drugs (17CR002788).

Interstate Nexus Determination

18. Affiant spoke with SA Jason Burns who is a qualified ATF Interstate Nexus Expert and on January 4, 2023, SA Burns determined the firearm (American Tactical, Model FXS-9, 9mm pistol (SN: TF674-21A05488)) was not manufactured in the state of Ohio, thus having traveled in interstate commerce to be found in the state of Ohio.

CONCLUSION

19. Based upon the above listed facts and circumstances, affiant believes and asserts that there is probable cause to believe that on December 30, 2022, BERRY did unlawfully, knowingly possess, a firearm and ammunition in and affecting interstate commerce after having been convicted of a crime punishable by imprisonment for a term exceeding one year, in violation of Title 18, U.S.C., Section 922(g)(1) and Title 21, United States Code, Section 841(a)(1) manufacture, distribute, or dispense, or possess with intent to manufacture, distribute

or dispense a controlled substance. The above violations were committed in the Southern District of Ohio, Eastern Division. Your Affiant requests that an arrest warrant be issued for Damion BERRY.

Cole Benner

Cole Benner, Special Agent
Bureau of Alcohol, Tobacco, Firearms and
Explosives

Sworn to and subscribed before me this _____ day of January 9, 2023

Kimberly A. Tolson
Kimberly A. Tolson
United States Magistrate Judge

